HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1227/2004 (S/S)

Mohammad Nabi and others.

vs

The State of Uttaranchal and others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 21-02-2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1227 (SS) OF 2004

1. Mohammad Nabi, S/o Rahamtullah, R/o Line No. 6, Azad Nagar, Haldwani, District-Nainital.
2. Mohammad Asif, S/o Ahmed Hasan, R/o Line No. 4, Azad Nagar, Haldwani, District-Nainital.
3. Gokul Chandra Paneru, S/o Puran Chandra Paneru, R/o Adarsh Nagar, Haldwani, District-Nainital.
4. Nurul Hasan, S/o Abdul Hasan Rizvi, R/o New Basti, Haldwani, District-Nainital.
5. Anees Ahmed, S/o Ahmed Hasan, R/o Line No. 4, Azad Nagar, Haldwani, District-Nainital. .....Petitioners.

Versus

1. State of Uttaranchal, through Secretary (Education) Dehradun, District Dehradun.
2. Director of Education (Basic) Dehradun, District-Dehradun.
3. District Education Officer (Basic), Nainital, District-Nainital. .....Respondents.

Mrs. Nishat Intzar, Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated : 21.02.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioners have prayed for a writ of mandamus directing the respondents to permit each of the petitioner provisionally in the written examination which is going to be held on 31.10.2004 for the purposes of appointment on the post of Assistant Teacher in Urdu.

2. At the time of admission, following order was passed on 29.10.2004:-

"*Heard Mr. Rakesh Thapliyal, Advocate holding brief of Ms. Nishat Intezar, learned counsel for the petitioner.*

Notices are accepted by learned standing counsel on behalf of respondents, who prays for and is allowed three weeks time to file counter affidavit and two weeks thereafter allowed for filing rejoinder affidavit to the petitioner.

By means of this writ petition the petitioner has sought direction for permission to appear in the examination scheduled to be held on 31.10.04 for recruit of Urdu teacher.

The Annexure-1 to the writ petition shows that petitioners have obtained certificate of Adeeb-e-Kamil from Jamia Urdu, Aligarh, Annexure-6 to the writ petition is a copy of the Government Order dated 14.07.1982, issued by the Government of U.P. treating the degree of Adeeb-e-Kamil equivalent to B.A. in Urdu. The said G.O. is applicable to the State of Uttaranchal under section 86 of U.P. Reorganisation Act, 2000. Annexure-7 shows that all the 5 petitioners have also obtained Moallim-e-Urdu (equivalent to B.T.C.) from Jamia Urdu, Aligarh.

In view of these facts prima facie the petitioners have fulfilled all the conditions required for qualification for appearing in the aforesaid examination.

Therefore, meanwhile it is directed that the petitioners will be allowed provisionally to appear in the examination scheduled to be held on 31.10.04 for recruitment of Urdu teachers.

Learned counsel for the petitioner prays for and is allowed to amend the relief clause in the writ petition within a period of one week."

3. Brief facts giving rise to the present writ petition are that an advertisement was issued on 29.07.2004 whereby the applications were invited for written examination for selection to the post of Assistant Teacher in Urdu subject in pursuance of which the petitioners, who are having the degree of Adeeb-e-Kamil from Jamia Urdu Aligarh, which is equivalent to graduation, also applied.

4. Apart from this each of the petitioners are having the domicile certificate of Uttaranchal State and are also permanent resident of District-Nainital (Uttaranchal).

5. On 26.10.2004 a pubic notice was issued in a daily newspaper, whereby an intimation was given that the examination for the post of Assistant Teacher in Urdu subject is going to be held on 31.10.2004. In the said notice, it was demonstrated that only those candidates who have passed the Urdu examination, which is equivalent to Graduation are also entitled to appear in the examination.

6. Petitioners have submitted that all of them have passed the Moallim-e-Urdu.

7. The short submission of the petitioners is that they have appeared in the interview but their result has not been declared. They have also filed the Government Order dated 18th November, 2005 to the following effect:-

"egkn;]

mi;qDr fo"k;d vkidh i=kd &cfld ¼mn½@36638@2005-06 fnukd 13-10-2005 dh dze esa e>h ;g dguh dk fun'k gq fd lE;d fopkjkijkUr mRrjkpy jkT; dh ifj"knh; ikFkfed fo|ky;ksa esa mnq fo"k; v/;kiu dh fy, lgk;d v/;kidksa dh fu;qfDr gsrq vgrk;h] iwoksRrj jkT; m0iz0 esa le;≤ ij iqpfyr vkn'kksa dk nf"Vxr j[krs gq,] fuEuor fu/kkfjr dh tkrh gS%&

1- mnq fo"k; dh lkFk Lukrd ¼ch,½ vFkok ;wthlh ls ekU;rk izkIr mnq Lukrd dh led{k mikf/k dh lkFk gh ftyk f'k{kk ,oa if'k{k.k lLFkku y[kuÅ] ldyMhgk ¼okjk.klh½] vkxjk rFkk eokuk ¼ejB½ ls chVhlh mnq vyhx< ls ekvkfye&,&mnq if'k{k.k izek.k lk= izkIr fd;k gkA

2- ;fn mi;qDr vgrk j[ku okyh vH;Fkh miyC/k ugh gks ikrh gS rks ,slh fLFkfr esa ikFkfed fo|ky;ksa esa mnq Hkk"kk dh v/;kiu gsrq Hkkjr esa fof/k }kjk LFkkfir fdlh fo'ofo|ky; ls mnq fo"k; dh lkFk Lukrd mikf/k rFkk lekU; cfld v/;kid izek.k i=

¼lkekU; chVhlh½ if'k{k.k vgrk j[ku oky vH;fFkZ;ksa oky lgk;d v/;kid d :l e fu;qDr fd;k tk ldrk gA

3- ;fn mi;qDr fu/kkfjr 'kf{kd @if'k{k.k vgrk j[ku oky vH;Fkh miyC/k ugh gk ikrk g] rk ,slh fLFkfr e mnk Hkk"kk d lgk;d v/;kidksa d fjDr inksa dk Hkj tkuk gr fuEufyf[kr J.kh d vH;fFkZ;ksa dk ojh;rk inku dh tk ldrh g fdUrq mUgs vif'kf{kr oruekuk fn;k tk;xk&&

d&& fdlh ekU;rk ikIr fo'ofo|ky; l mnk fo"k; d lkFk Lukrd ¼ch,½ vFkok ;sthlh l ekU;rk ikIr mnk Lukrd d led{k mikf/k rFkk 11-8-97 d i'pkr tkfe;k mnk vyhx< dk ekvfYye&,&mnk if'k{k.k iekk.k i=A

[k&& fdlh ekU;rk ikIr fo'o fo|ky; l mnk fo"k; d lkFk Lukrd ¼ch,½ mikf/k vFkok ;sthlh l ekU;rk ikIr mnk Lukrd d led{k mikf/kA

¼2½ dlk;k mDr d vk/kkj ij mnk v/;kidksa dh fu;qfDr ifd;k dk bl 'kklukn'k d fuxr gkuk dh frfFk l ,d ekg e i.k dj;s tkuk gr rRdky vko';d vxkRrj dk;okgh fd;k tkuk lfuf'pr djsA"

8. According to the Government Order, the relaxation has been made, who have got the degree of Moallim-e-Urdu from Jamia Urdu, Aligarh after 11.08.1997.

9. Earlier to the passing of the present Govt. Order dated 18th November, 2005, there were two judgments of this Court, one of the judgments has been passed in Writ Petition No. 794 (S/B) of 2002 Azad Ahamad and 11 others Vs. State of U.A. and and another, where this Court after relying upon the G.O. dated 13th September, 1994 has passed the order to the following effect:-

"A bare perusal of G.O. dated September 13, 1994 Annexure-4 to the writ petition reveal that the State of U.P. has recognized the Moallim-E-Urdu certificate equivalent to B.T.C. Urdu and in pursuance thereof those incumbent who hold such certificates were to be given appointment against vacancies of

B.T.C. discipline in Urdu language. No doubt, by G.O. dated 11.08.1998 certificates, which were recognized as equivalent to B.T.C., have been de-recognized, except the certificates issued by institutions specified in this order. Jamia-E-Urdu do not find place among those institutions and therefore, the certificate of Moallim-E-Urdu ceased to have recognition with effect from the date of issuance of the said G.O. dated 11.08.1997. Learned Standing Counsel did not controvert the argument advanced by the learned counsel for the petitioners that in view of the provisions of Section 86 of Uttar pradesh Reorganization Act, 2000 both the above G.O.s of the State of U.P., issued prior to the creation of the State of Uttaranchal, continue to apply in the State of Uttaranchal. Therefore, if any person has obtained Moallim-E-Urdu certificate before 11.08.1997 will be entitled to the benefit of this certificate and G.O. dated 13.09.1994 (Annexure-4)

* * * *

For the above reasons only those petitioners who have obtained Moallim-E-Urdu certificate before 11.08.1997 will be entitled to proper relief in this petition. Since the candidates who were selected pursuant to advertisement dated 16.06.2002 issued by respondent No. 2 have not been impleaded as the respondents in this petition and therefore, no relief in regard to the said advertisement is being granted to the petitioners.

The petition, therefore, succeed partly and a writ in the nature of mandamus directing and commanding the respondents to recognize the certificate of Moallim-E-Urdu equivalent to B.T.C. (Urdu) for the recruitment against the appropriate posts of those petitioners who have obtained certificate prior to 11.08.1997. No order as to costs."

10. A counter affidavit has been filed by the State, where in paragraph 6 it has been stated as under:-

"6. That the contents of para 6 of the writ petition are not admitted and are denied. It is stated that prior to 11/08/1998 Moallim-E-Urdu Courses of Jamiya Urdu Aligarh was recognized equivalent to B.T.C. Course by the State of U.P. Such recognition was cancelled by the State of U.P. on 11/08/1997 vide G.O. NO. 2657/15-5-97-127/97 T.C. dated 11/08/1997. A true copy of the G.O. dated 11/08/1997is being filed herewith and is marked as Annexure No. C.A. 1 to this affidavit. It is further stated that a writ petition no. 794 of 2002 was filed for a direction to the State of Uttaranchal to recognized certificate Moallim-E-Urdu education equivalent to B.T.C. On 02/08/2003, the Hon'ble Court was held the validity of the G.O. dated 11/08/1997 and directed to recognized the certificate of Moallim-E-Urdu equivalent to B.T.C. of those petitioners only who have obtained certificate prior to 11/08/1997."

11. In view of the aforesaid Government Order, the writ petition deserves to succeed. A writ of mandamus is issued to the respondents to consider the candidature of the petitioners for the post of Assistant Teacher in accordance with the Government Orders dated 13th September, 1994 and 18th November, 2005 within a period of six weeks from the date of presentation of the certified copy of the order.

12. Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

21.02.2006
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